

SILICON SENSING SYSTEMS LIMITED STANDARD CONDITIONS OF PURCHASE (I), 31-01-03 EDITION

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions and the Order (as defined below) the following expressions shall have the following meanings:-

“SSS Ltd” means Silicon Sensing Systems Limited Company whose registered office is at Clifton Road, Southway Plymouth, Devon PL6 6DE, United Kingdom.

“Conditions” means the provisions set out herein.

“Force Majeure” means events proved to be beyond the Purchaser’s or the Supplier’s reasonable control including without limitation an act of God, fire, flood, explosions, earthquakes, any act of Government, war, insurrection or riots.

“Intellectual Property” means information and data of all kinds, whether subject to statutory protection or not, including but not limited to inventions, drawings, designs, computer software, technical data packages, test results, manufacturing information, financial or commercial information, know how and trade secrets or other proprietary information.

“Intellectual Property Rights” means patents, patent applications, registered and unregistered designs, copyright, trade marks and other forms of statutory protection conferring rights in Intellectual Property, as well as rights existing or arising in law equity or under the laws of other jurisdictions in relation to Intellectual Property, including trade secrets and unpublished know how and other rights of a like nature throughout the world.

“Order” means the purchase order which incorporates these Conditions by reference and any amendments thereto.

“Parties” means the Purchaser and the Supplier.

“Purchaser” means Silicon Sensing Systems Limited whose registered office is at Clifton Road, Southway Plymouth, Devon PL6 6DE, United Kingdom.

“Special Conditions” means those conditions headed as such on the Order.

“Specification” means the Purchaser’s written technical requirements or other agreed means of defining the technical requirements for the Suppliers referred to by the Order.

“Supplier” means the person on whom the Order is placed.

“Supplies” means all goods, materials, work or services which are the subject of the Order.

1.2 To the extent that the Conditions may be inconsistent with the Special Conditions the latter shall take precedence.

1.3 Headings are for convenience only and shall not affect the interpretation on the Order or any documents incorporated in the Order.

2. WHOLE AGREEMENT

The Order supersedes all prior agreement, understandings, representations and collateral agreements whether written or oral between the Parties relating to the subject matter of the Order.

3. ORDER

The Purchaser will not accept responsibility for any Supplies unless supplied in all respects in accordance with the Order, the reference and item number of which shall be quoted on all documents and correspondence (including advice notes, invoices and required certificates) and packages. The Supplier shall notify the Purchaser of Order acceptance within 14 days of the date of Order, and failure to do so will give the Purchaser the right to cancel the Order without incurring liability. If the Supplier does not notify the Purchaser of Order acceptance as aforesaid and the Purchaser does not elect to cancel the Order then commencement of the performance of the Order by the Supplier shall be deemed to be unconditional acceptance of the Order by the Supplier.

4. ADHERENCE TO THE ORDER

The Supplier shall provide the Supplies in all respects and in accordance with the Order.

5. QUALITY

Unless otherwise agreed in writing by the Purchaser, the Supplier shall comply with the current issue (as at the date of order) of the Purchaser’s Suppliers Quality Requirements Manual (SQRM01), a copy of which is available on request.

6. ADVICE AND RELEASE CERTIFICATES

6.1 On delivery of each consignment of the Supplies, the Supplier shall deliver to the Purchaser such documents (which shall include, without limitation, advice notes, certificates of conformity and civil approved certificates) as required by the Order. If the Supplier is a stockist, it shall also provide with delivery of each consignment of Supplies, copies of the original manufacturer’s certificate of conformity or civil approved certificate together with test figures, heat treatment particulars etc., where applicable.

6.2 One copy of all documents referred to in 6.1 above shall also be sent by first class post to SSS Ltd addressed for the attention of the Purchaser’s Buyer (which is shown on the Order) quoting the reference on the Order.

6.3 If the Supplier fails to comply with Conditions 6.1 and 6.2 the Purchaser shall be under no obligation to accept delivery of the relevant consignment.

7. PRICE

7.1 Where prices have been agreed they shall be set out on the Order, fixed (non-revisable) and exclusive of value added tax but inclusive of all other taxes, imports, fees and duties. If value added tax is payable it shall be separately identified on the invoice and shall be payable by the Purchaser subject to receipt of a valid VAT invoice.

7.2 No additional charge shall be made for packaging, insurance or delivery unless otherwise agreed and set out in the Order and any such charge shall be separately identified on the invoice.

7.3 Where prices are not agreed at the date of the Order, but commencement of performance of work on the Order by the Supplier is agreed by the Purchaser an invoice shall not be submitted before the price has been agreed and incorporated in the Order in accordance with Condition 26.

8. PAYMENT

8.1 On or after delivery of the Supplies, the Supplier shall submit an invoice to the address of the Purchaser stated on the Order for those delivered Supplies.

8.2 The Purchaser shall pay the invoice within sixty (60) days of the end of the month in which the invoice is delivered provided that:-

8.2.1 the invoice quotes correctly the amount of the payment, the correct Order number, the item number, the part and drawings numbers and a description of the Supplies (including without limitation, quantities and weights); and

8.2.2 the Supplies are delivered by the Supplier and accepted by the Purchaser in accordance with Conditions 9 and 11 respectively.

9. DELIVERY

9.1 Delivery shall be made in accordance with the instructions set out in the order and time shall be of the essence in relation to the delivery dates set out on the Order.

9.2 All Supplies must be properly and securely packed. If so required by the Supplier, the Purchaser will return packaging cases or containers to the Supplier at the Supplier’s expense.

9.3 If there is any delay in delivery due to causes (other than Force Majeure) which are not attributable to the negligence of the Purchaser, the Purchaser may terminate the Order with Immediate effect and the Supplier shall be liable for damages in accordance with Condition 13.2.

9.4 The Supplier shall not be liable for delays in delivery due to Force Majeure provided that the Supplier promptly notifies the Purchaser of any delay or anticipated delay as soon as it is known and resumes performance as soon as possible thereafter. However if such delay exceeds fourteen (14) days the Purchaser shall be entitled to terminate the Order without incurring any liability whatsoever except in respect of that part of the Supplies already delivered and accepted by the Purchaser prior to such termination.

9.5 Should an event of Force Majeure occur, the Purchaser may wholly (or partly) suspend or postpone any of its obligations under the Order (without incurring any liability) by promptly notifying the Supplier in writing. Such suspension or postponement will continue until the circumstances of Force Majeure have ceased or been overcome or the Purchaser notifies the Supplier in writing that it wishes to resume its obligations under the Order, or until the Purchaser notifies the Supplier that it wishes to terminate the Order in accordance with clause 9.4 above.

9.6 The Purchaser shall have the right to request the Supplier to delay delivery of any of the Supplies without revision of the price.

10. TITLE AND RISK

Title to and risk in the Supplies shall pass to the Purchaser on delivery.

11. ACCEPTANCE

11.1 Where acceptance tests are defined in the Order, acceptance of Supplies delivered shall be subject to completion of the acceptance tests to the satisfaction of the Purchaser. Where no acceptance test is defined in the Order the Purchaser shall have the right to inspect the Supplies after delivery and acceptance shall take place if the Supplies are satisfactory to the Purchaser on inspection or, if no inspection is made, the Supplies shall be accepted after they have been taken into use by the Purchaser.

11.2 If the Purchaser is not satisfied that the Supplies are delivered in accordance with the Order (including but not limited to minor or slight breaches of the Order by the Supplier), the Purchaser may:

11.2.1 reject the Supplies delivered in whole or in part;

11.2.2 give notice to the Supplier to replace or repair promptly the Supplies delivered at the Supplier’s expense and risk;

11.2.3 require the Supplier to pay all the Purchaser’s expenses, losses incurred and additional costs directly arising from the failure to deliver the Supplies to the satisfaction of the Purchaser; and/or

11.2.4 set off any amounts owed to the Supplier against any amount owed to the Purchaser arising under 11.2.3 above.

12. WARRANTY

12.1 The Supplier warrants that the Supplies:-
12.1.1 conform in all respects with the Specification and

12.1.2 are free from defects (whether actual or latent) in design, materials and workmanship.

12.2 The warranty in Condition 12.1 shall, in respect of each item of the Supplies continue for twelve (12) calendar months from the date of acceptance of such item of the Supplies.

12.3 If there is a defect in the Supplies during the warranty period, the Supplier shall at its own expense and risk, but at the discretion of the Purchaser, without delay, either repair or replace the defective Supplies or refund the Purchaser the price of the defective Supplies.

12.4 The warranty at Condition 12.1 shall apply to the Supplies or any part of them replaced or repaired in accordance with these Conditions so that the warranty shall continue for twelve calendar months from the date of acceptance of such replaced or repaired item of the Supplies.

12.5 If a breach of warranty by the Supplier causes any of the Supplies not to be available for the Purchaser’s use within the warranty period for the Supplies then the warranty period for the Supplies shall be extended by the period during which they were not available for use by the Purchaser.

12.6 The Supplier agrees that all warranties attaching to the Supplies shall be capable of being assigned to a customer of the Purchaser or other user by the Purchaser without prior written notice to the Supplier.

12.7 This Condition 12 shall apply in addition and without prejudice to any other rights and remedies available to the Purchaser.

13. REMEDIES

13.1 Termination for Default

13.1.1 If the Supplier is in breach of the Order or of any of these Conditions (including, without limitation, the warranty at Condition 12.1) the Purchaser may give the Supplier a written notice specifying the breach.

13.1.2 If the breach is not capable of remedy such notice shall terminate the Order immediately.

13.1.3 If the breach is capable of remedy, the Supplier shall at its own expense rectify the breach within twenty eight (28) calendar days of the date of the notice. If the Supplier does not rectify the breach within twenty eight (28) calendar days (or such other period as may be agreed in writing) the Purchaser may give written notice to the Supplier immediately terminating the Order.

The provisions of this clause 13.1 shall at all times be subject to and without prejudice to the provisions of clause 9.

13.2 Damages for Default

The Supplier shall be liable for all losses, liabilities, actions, claims, proceedings, judgements, damages, compensation, obligations, injuries, costs and expenses (including legal costs and expenses) of whatever nature suffered by the Purchaser as a result of a breach by the Supplier of the Order or any of these Conditions.

13.3 Indemnity

The Supplier shall upon demand indemnify the Purchaser in full against all losses, liabilities, actions, claims, proceedings, judgements, damages, compensation, obligations, injuries, costs and expenses (including legal costs and expenses) of whatever nature suffered by the Purchaser resulting from the negligence, breach of contract or breach of statutory duty caused by the acts or omissions of the Supplier, its employees, sub-contractors or agents in performance of the Order or in connection with any defect in any item of the Supplies. This

Indemnity shall continue in force notwithstanding termination for whatever reason of the Order.

13.4 Termination for Insolvency

If the Supplier enters into a deed of arrangement or commits an act of bankruptcy or compounds with its creditors or if a receiving order is made against it or (being a company) it shall pass a resolution or the Court shall make an order that the Supplier shall be wound up (otherwise than for the purposes of solvent amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Supplier or if the Supplier or if the Supplier suffers the appointment or the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding-up order or if the Supplier takes or suffers any similar action in consequence of debt or if the financial responsibility of the Purchaser shall, in the opinion of the Purchaser, become impaired or if the Supplier shall commit any breach of any part of the Order of these Conditions, the Purchaser may without prejudice to its rights and remedies under the Order of these Conditions or any other remedies arising at law suspend the performance of, or terminate, the Order immediately (whether in whole or in part) without incurring any liability whatsoever except in respect of Supplies delivered before the date of any of the abovementioned events.

13.5 Cancellation

13.5.1 The Order may be cancelled (in whole or in part) at any time by the Purchaser on written notice stating that the Order is cancelled.

13.5.2 If such notice is given, the Supplier shall comply with any directions regarding the Supplies which the Purchaser gives, including (without limitation) a right to enter onto the Supplier’s premises.

13.5.3 The Purchaser and the Supplier shall agree a fair and reasonable price for all work done and materials purchased for the purpose of carrying out work on the Order up to the date of termination.

13.5.4 In order to agree such price, the Supplier shall submit an account to the Purchaser within three (3) months from the date of cancellation in a form satisfactory to the Purchaser.

13.5.5 The agreed price, together with any sums paid or due to the Supplier under the Order before the effective date of termination shall not exceed the total price of the Supplies under the Order and such payment shall be the Purchaser’s sole liability in respect of the cancellation.

13.6 Any termination or cancellation of the Order by the Purchaser for whatever reason shall be without prejudice to any rights or remedies which may have accrued to the Purchaser prior to termination or cancellation and the Purchaser shall use its reasonable endeavours to mitigate its loss on any termination.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property created as a result of the work undertaken by the Supplier or its sub-contract for the purpose of the Order shall vest in and be the absolute property of SSS Ltd, and the Supplier shall do all necessary acts to vest such Intellectual Property in the name of the Purchaser or its nominee, such acts to include (without limitation) the execution of documents.

14.2 The Supplier warrants that having carried out all reasonable investigations, the Supplies and the intended use of the Supplies by the Purchaser will not infringe any Intellectual Property Rights of a third party existing or pending at the date of the Order.

14.3 The Supplier shall on demand indemnify the Purchaser against all losses, liabilities, actions, claims, proceedings, judgements, damages, compensation, obligations, injuries, costs and expenses (including legal costs and expenses) of whatever nature which may be suffered by or on behalf of the Purchaser as a result of the infringement of any third party Intellectual Property Rights arising in connection with the Supplies.

15. HEALTH AND SAFETY

15.1 The Supplier shall familiarise itself with and ensure that its sub-contractors, and agents shall familiarise themselves with, and comply with the Purchaser’s procedures relating to discipline, fire, health and safety when on the sites of the Purchaser and such other procedures applicable to such other sites the Order requires.

15.2 The Supplier shall as soon as possible (and no later than on delivery) provide the Purchaser with all present and future instructions relating to the use and disposal of the Supplies and in particular draw attention to any dangers, hazards or restrictions associated with the Supplies.

16. INSURANCE

16.1 If the Suppliers’ employees, agents or sub-contractors are present on the sites of the Purchaser or such other sites as the Order requires, the Supplier shall effect legal liability insurance of not less than five million pounds (£5,000,000) per event in respect of loss of or damage to property of the Purchaser or death or injury to persons resulting from performance of the Order.

16.2 If the Supplier is required to carry out work at any aerodrome the Supplier shall ensure that its legal liability insurance extends to aviation and air-side exposure.

16.3 Should the Supplier’s legal liability insurance policy cover be in excess of five million pounds (£5,000,000) the Supplier shall have the full benefit of such policy and the Supplier shall notify its insurers of the Purchaser’s interest on such policy and shall give a copy of such policy to the Purchaser on request.

17. CONFIDENTIALITY AND SECURITY

17.1 The Order and any Intellectual Property incorporated in to or derived from work carried out under the Order together with any other Intellectual Property disclosed by either the Purchaser or the Supplier to the other which derives from any company, firm, other organisation or any person with whom the Purchaser or the Supplier may be in commercial and/or technical co-operation shall remain confidential, shall at all times be treated by the Purchaser and the Supplier as trade secret, shall not be disclosed to any third party without the disclosing party’s prior written consent and shall only be disclosed to the receiving party’s own employees on a need to know basis.

17.2 The Supplier shall not disclose the Purchaser’s name, the name of the Purchaser’s customer, the name of any project or programme, or any other Intellectual Property acquired through its dealings with the Purchaser for any reason whatsoever including for publicity or marketing purpose without the prior written consent of the Purchaser.

17.3 Any information given to the Supplier by the Purchaser shall remain the absolute property of the Purchaser.

17.4 In the conduct of the Supplier’s dealings with the Purchaser, neither the Purchaser nor Supplier shall remove from the other’s premises any items (including without limitation) drawings, specifications, documents, or data without the other’s prior written consent.

17.5 The Purchaser’s sites to which the Supplier may have access during its performance of the Order may be subject to national security requirements. It is a condition of the Order that in all the Supplier’s dealings with the Purchaser the provisions of the Official Secrets Act 1911 to 1989 and any amendment thereto shall apply and the Supplier shall procure that any of its

employees, agents, or sub-contractors (to whom information shall only be given in support of the preparation or furtherance of the Order) are made aware of this provision, are notified of the Order or in operation at the Purchaser’s sites.

17.6 The Supplier acknowledges that condition 17 applies from the date of the Order and shall continue to apply after completion or early termination of the Order. The Supplier shall procure that any of its employees, agents or sub-contractors that may have a need to visit the Purchaser’s sites or have access to any Intellectual Property, arising out of the Supplier’s dealings with the Purchaser, have notice that the above mentioned provisions apply equally to them.

18. SUB-CONTRACTS AND ASSIGNMENT

18.1 No work on the Order may be sub-contracted by the Supplier without the prior written consent of the Purchaser (which shall not be unreasonably withheld).

18.2 The Order may not be assigned in whole or in part by the Supplier without the prior written consent of the Purchaser (which shall not be unreasonably withheld).

18.3 The Purchaser’s interests in this Order may be assigned without the consent of the Supplier.

19. PROPERTY ISSUED BY THE PURCHASER

19.1 The Supplier shall not acquire any legal or beneficial interest in any property supplied to it by or on behalf of the Purchaser (whether on free issue or loan) for performance of work on the Order.

19.2 Any such property possessed or controlled by the Supplier, shall be held at the Supplier’s risk, stored and booked separately from other property, maintained at the Supplier’s expense in good and serviceable condition, clearly marked as “Silicon Sensing Systems Property” and only be used by the Supplier for the performance of the Order.

19.3 At the request of the Purchaser (which may be made at any time) or on completion of the Order, such property issued to the Supplier shall, unless incorporated in to the Supplies, be returned promptly to the Purchaser.

19.4 Upon reasonable written notice being given to the Supplier, the Purchaser shall have the right to enter the Suppliers premises to recover any of its property.

20. COMPLIANCE WITH LAW AND REGULATIONS

20.1 The Supplier shall comply with all statutory and other requirements applicable to its business in performing work on the Order, including, but not limited to compliance with all labelling requirements as set out from time to time by the United Kingdom and United States of America authorities, and provision by the Supplier of the appropriate certificates of conformity to the Purchaser.

20.2 The Supplies may be exported or re-exported by the Purchaser and the Supplier confirms that no restriction exists in respect of US Department of Commerce Exports Administration Regulations or any other US or non-US Government Regulations.

20.3 The Supplier shall comply with all relevance US and UK Government labelling requirements and will provide all appropriate certificates of conformity applicable to the Supplies.

21. INDUCEMENTS

The Supplier shall neither:-

21.1 induce an employee of the Purchaser to make any concession to the Supplier, issue the Order or alter any of the requirements of the Order in return for any gift, money or other inducement;

21.2 pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Order; nor

21.3 encourage an employee of the Purchaser to commit any act of dishonesty against the Purchaser which may benefit the employee or be a detriment to the Purchaser, or both.

22. NOTICES

22.1 All notices and communications shall be in writing and in the English language and shall be deemed served:

22.1.1 if sent by fax and copied by letter, on the date of despatch; and

22.1.2 if sent by first class post, forty eight (48) hours from the date of despatch.

22.2 Any notice or other communication sent to the Supplier shall be sufficient if sent to the address notified to the Purchaser for the purpose or, if not notified, the Supplier’s address on the Order.

22.3 Any notice or other communication sent to the Purchaser shall be sent to the address given for the Purchaser on the Order for the attention of the person shown on the Order.

23. WAIVER

Any delay or omission by either party to enforce any right against the other shall not be construed as a waiver of such rights and shall not operate as a bar to any subsequent enforcement.

24. SEVERANCE

If any term, condition or provisions, or part thereof, of the Order in nullified or made void the remaining terms, conditions and provisions shall remain, as far as possible, in full force and effect.

25. LAW AND JURISDICTION

25.1 The Order and these Conditions shall be governed and construed in accordance with the laws of England and the Supplier agrees irrevocably to submit to the exclusive jurisdiction of the English Courts.

25.2 No actions or proceedings shall be initiated against the Purchaser except in the English Courts.

25.3 To the extent that the Supplier may in any jurisdiction in which proceedings may at any time be instituted for the determination of any question arising under or for the enforcement of the Order or these Conditions (including any interlocutory proceedings the execution of any judgement or award arising therefrom), be entitled to claim or otherwise be accorded for itself or its property assets or revenues immunity from suit and attachment (whether in aid of execution before judgement or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to the Supplier or its property assets or revenues such immunity (whether or not claimed) the Supplier hereby irrevocably agrees not to so claim and waives such immunity to the fullest extent permitted by the law of such jurisdiction.

26. AMENDMENTS

Amendments to the Order shall only be effective when:

26.1 a document setting out the terms of the amendment is signed by the Purchaser and the Supplier; and

26.2 an Order amendment is issued by the Purchaser which incorporates the document described in Condition 26.1